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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re O.C., a Person Coming Under the  
Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.C.,

Defendant and Appellant.

B235262

(Los Angeles County  
Super. Ct. No. CK80326)

APPEAL from orders of the Superior Court of Los Angeles County,  
Stanley Genser, Juvenile Court Referee. Affirmed.

Deborah Dentler, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County  
Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and  
Respondent.

D.C. (father) appeals an order denying a Welfare and Institutions Code section 388 petition and an order terminating his parental rights with respect to his two children, O.C. and J.C. (the children).<sup>1</sup>

Father contends the juvenile court abused its discretion in summarily denying his section 388 petition and in refusing father's request for a continuance of the section 366.26 hearing to permit father to present evidence of the parent-child bond.

We conclude the evidence supports the juvenile court's finding father failed to demonstrate changed circumstances or that the proposed change in order was in the best interests of the children, and the juvenile court committed no abuse of discretion in denying father's request for a continuance of the permanency planning hearing, which had been set for a contest four months earlier.

## **FACTS AND PROCEDURAL BACKGROUND**

### *1. Detention.*

The children were taken into protective custody on December 7, 2009, after mother was hospitalized following a drug overdose and there were no family members available to care for them. Father was unavailable because he was in jail awaiting trial on a kidnapping charge for which he had been arrested on May 10, 2009.<sup>2</sup> The Department of Children and Family Services (the Department) placed the children in foster care and filed a dependency petition.

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<sup>1</sup> Subsequent unspecified statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Father's arrest and conviction history, provided by the California Department of Justice, indicated that, as a juvenile, father was found to have committed robbery in 2001. As an adult, father was convicted in 2003 of driving under the influence and giving false information to a peace officer. In 2005, father was convicted of driving under the influence. In 2006, father was arrested for impersonating another and on warrants in his previous driving under the influence case. In 2007, father was convicted of misdemeanor battery. In 2008, father was convicted of inflicting corporal injury on a spouse or cohabitant, a misdemeanor. Also in 2008, father was convicted of taking a vehicle without the owner's consent in one case and trespass in another.

At the detention hearing, father completed a Statement Regarding Parentage (JV-505) in which he declared he was in a committed relationship with mother when the children were born, both children had lived with him since birth, he held the children out as his own, and he participated in their care. The juvenile court ordered the children to remain in shelter care and granted mother and father supervised visitation.

*2. Jurisdictional findings and disposition.*

The jurisdiction report prepared for January 21, 2010, indicated the family previously had been the subject of referrals in January of 2008 for general neglect of newborn J.C. after mother tested positive for marijuana and benzodiazepines at the time of the child's birth, and in June of 2008 based on allegations of caretaker absence and incapacity due to alleged drug use by mother. Both referrals were closed as unfounded. The family was the subject of another referral in May of 2009, when it was alleged mother was unable to care for the children due to drug abuse and that mother and father had engaged in domestic violence in the presence of the children.

Mother advised the social worker the family lived together before father's arrest and that father appropriately had cared for the children. Mother and father planned to reside together when father was released.

Father told the social worker he was willing to do whatever was necessary to have the children placed with him after his release and he did not want to lose his parental rights. Although the juvenile court had ordered monitored visitation, father did not want his children to visit him "at any correctional facility, as it was not appropriate." Father indicated he had no relatives who might be able to care for the children and indicated he would advise the Department of any prospective caretakers he wanted assessed.

On January 21, 2010, the juvenile court found father was the children's presumed father. The juvenile court authorized a monitor to transport the children to visit father in prison and directed the Department to arrange for photographs of the

children to be sent to father. The juvenile court denied father's request for telephone contact with the children.

On April 2, 2010, the juvenile court sustained the dependency petition as modified.<sup>3</sup> With respect to disposition, father indicated he had been sentenced to four years in prison at 80 percent which would require him to serve "another 26 months." The juvenile court stated family reunification services for father would be "pointless." Father's counsel responded, "That's fine, your honor. [¶] The only thing the Department is asking for my client to do is parenting class."

The juvenile court indicated father was going to be "incarcerated beyond the period of reunification and there's no evidence it would be in the best interest . . . [¶] . . . [¶] of the children to provide him with reunification services." The juvenile court noted father's youngest child was 14 months old when father was arrested.<sup>4</sup>

The juvenile court denied father family reunification services pursuant to section 361.5, subdivision (e)(1) and stated: "Providing [family reunification] services would prevent permanency for the child[ren] in the event that mother [is] unable to reunify [and] that [would] be detrimental to the children."

### 3. *Father's first appeal.*

Father appealed the denial of family reunification services. In B224672, we affirmed the order, finding father failed to object to the order and, in any event, the juvenile court made the statutorily required finding of detriment to the children and committed no abuse of discretion in applying section 361.5, subdivision (e)(1). We rejected father's reliance on *In re Kevin N.* (2007) 148 Cal.App.4th 1339 and distinguished it on the basis that both children in this case were under the age of three

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<sup>3</sup> As sustained, the petition alleged mother has a history of substance abuse and is a current abuser of controlled substances which renders mother incapable of providing regular care. Further, mother has a history of mental and emotional problems which, if left untreated, render mother incapable of providing regular care. Father has failed to provide the children with the necessities of life and is incarcerated.

<sup>4</sup> Father's oldest child was 28 months of age on the date of father's arrest.

years when they were detained. Also, in *Kevin N.* the juvenile court found only that providing family reunification services to the parent would be “futile.” (*Id.* at p. 1345.) Here, although the juvenile court initially stated family reunification services would be “pointless,” it later also stated: “Providing [family reunification] services would prevent permanency for the child[ren] in the event that mother [is] unable to reunify [and] that [would] be detrimental to the children.”

#### *4. Subsequent proceedings.*

On February 1, 2010, the children were placed in “the approved foster/adopt home of Mr. and Mrs. M.” A status review report prepared for August 30, 2010, indicated the children had adapted well to the placement and appeared to be bonded and attached to their caregivers. The caretakers reported father had telephoned to speak to the children but the children “won’t remain on the phone with him.”

Both children were referred for mental health assessments at Children’s Hospital Los Angeles. On April 13, 2010, O.C. was diagnosed with Reactive Attachment Disorder of Infancy, disinhibited type, and J.C. was diagnosed with a communication disorder. O.C.’s screening report indicated the child lacked appropriate boundaries for her age, called Mr. and Mrs. M. “mom and dad” when she met them and “may not have a sense of who her parents are, given that she does not appear to recognize their voices on the phone. She has been placed in 4 foster care homes since removal from her biological [mother’s] care, and seems to have difficulty with transitions.” J.C.’s screening report indicated he has difficulty with changes in routine, speaks using one or two words and seems frustrated by his difficulty in communicating. Both children were referred for developmental assessments with the recommendation that Mr. and Mrs. M. attend parenting classes.

#### *5. The section 388 petition filed October 1, 2010.*

On October 1, 2010, father filed a section 388 petition requesting reunification services. The petition stated father was on a waiting list for a parenting class, he was enrolled in Palo Verde College and Bible Correspondence College, he regularly wrote to the children and drew pictures for them, and his release date was May 15, 2012.

Father's petition asserted he was bonded to the children and he wanted to continue his relationship with them.

At a hearing on October 5, 2010, the juvenile court denied father's section 388 petition because he failed to show changed circumstances or that the children's best interests would be promoted by the change of order. The juvenile court noted father was denied family reunification services because of the length of his incarceration and that remained unchanged.

At the same hearing, the juvenile court terminated mother's family reunification services and set a permanency planning hearing under section 366.26.

*6. Reports and interim proceedings in advance of the permanency planning hearing.*

A report filed February 1, 2011, indicated Mr. and Mrs. M. had been married for 10 years, they lived in a two-story home near Los Angeles, Mrs. M. worked as an Assistant Principal, Mr. M. worked part-time as a Director of Worship and provided day care for the children. Mr. and Mrs. M. had an approved home study, they had cared for the children since February of 2010, and they very much wanted to provide the children a permanent home. The children regarded Mr. and Mrs. M. as parental figures. A caregiver information form filed by Mr. and Mrs. M. on September 30, 2010, indicated the children had shown "tremendous positive growth" in their interactions with other children and adults.

On February 1, 2011, the juvenile court granted father reasonable telephone contact with the children and continued the permanency planning hearing.

Social reports filed April 5, and May 3, 2011, indicated the children "appear to be attached and bonded to" Mr. and Mrs. M. and the placement remained stable and appropriate. The children and Mr. and Mrs. M. had been participating in a parent management skill development program since September of 2010. Mr. and Mrs. M. were committed to "providing the children with a loving and permanent home if parental rights are terminated." Mr. M. indicated that, commencing March 23, 2011, father placed weekly telephone calls to the children which lasted 10 to 15 minutes.

However, the children were easily distracted during the calls. The social worker had been forwarding father's cards and letters to the children.

On April 5, 2011, the permanency planning hearing was continued for proper notice to August 2, 2011. The juvenile court issued a removal order for father from state prison for that date.

*7. The section 388 petition filed July 25, 2011.*

On July 25, 2011, father filed a petition under section 388 seeking family reunification services. The petition stated father had been the primary caretaker of the children prior to his arrest, he has continued his relationship with his children through letters and telephone calls, and it was not in the children's best interest to be adopted by a non-relative. Father declared: "When I am able to speak with my children, they call me 'daddy' and tell me about their activities and other things going on with their lives." Father had completed an anger management program, parenting classes and a 90-day substance abuse program, and he was enrolled at Palo Verde College. Father had been unable to find an approved monitor to bring the children to visit him.

*8. The combined hearing of August 2, 2011.*

*a. Summary denial of father's section 388 petition.*

The juvenile court indicated its tentative ruling was to deny the petition as there had been no "substantial change in circumstances" in that father will remain incarcerated for a "substantial period of time" and "well beyond the statutory period for reunification . . . ." The juvenile court indicated "these children do not really know the father" and concluded father had failed to show it would be in the best interests of the children to provide family reunification services.

After hearing argument, the juvenile court adopted the tentative ruling. It found father's petition essentially conceded father could not reunify within the statutory period. Also, although father had participated in programs, there was no evidence, "other than biology, that it would be in the best interest of these children to terminate their relationship with the current caretaker[s] in order to reunify the children with

their father.” The juvenile court denied the petition and then conducted the permanency planning hearing.

b. *The permanency planning hearing.*

At the outset of the hearing, father’s counsel requested a continuance “so that the children may be present in order to testify regarding the nature of their relationship with their father and telephone calls” with him. The juvenile court denied the request. The juvenile court indicated telephone contact with children three and four years of age was insufficient to establish the beneficial parental relationship exception. Also, “because of their young age, I don’t believe that they could produce evidence as to their own best interest . . . .” The juvenile court noted that, since his arrest, father had not acted as a parent to the children.

Father testified that, prior to his arrest on May 10, 2009, he took the children into his home, provided for them and held them out as his children. Father “played with them,” took “them on outings,” and “watched cartoons with them . . . .” He “showed them love and affection” and did “[b]asically, everything a parent would do with their kids.”

After his arrest and before the filing of the dependency petition, father visited with the children and spoke to them on the phone. Father claimed he requested visitation but the social worker provided none. Father’s weekly telephone contact with the children was interrupted in August of 2010 when a block was placed on his calls from prison. The social worker sent him photographs of the children every three months but did not assist with removal of the block. Weekly telephone calls resumed in May of 2011, through father’s attorney.

In their telephone calls, father spoke to the children about the cards he sent them, how they were doing in school, their church services and what they liked to watch on television. The children told father about trips to the beach and Disneyland. Father also had written letters to the foster parents to be read aloud to the children. Father testified the children call him “Tate,” which “in my language in Romania” means “Daddy.” Father indicated he is a “Gypsy.”



Father testified the children know “they have two other parents” and understand that father is incarcerated. Father asked the juvenile court to allow him to remain part of the children’s lives and expressed his belief that termination of parental rights would cause the children great “emotional detriment[.]”

Mr. M. testified the children were placed in his home on February 1, 2010, and they call him “Daddy” and call Mrs. M. “Mommy or Mom.” They call father “Tate” most of the time. However, O.C. sometimes used the word “Pata” or Daddy to refer to father. The children began having telephone contact once or twice a week with father in March or April, 2010. Father’s calls were blocked by the correctional facility for a few months during the summer of 2010. Weekly 15-minute telephone calls to the children resumed in May of 2011. The calls took place approximately two-thirds of the time.

Counsel for the children joined in the Department’s request to terminate parental rights and argued the children have lived with Mr. and Mrs. M. “for the majority of their young lives . . . .”

Father’s counsel asked the juvenile court to apply the beneficial parental relationship exception to termination of parental rights because father had a bond, including a “cultural bond” with the children.

The juvenile court found father had failed to show the benefit of continuing the parental relationships outweighed the benefits of adoption. “Unfortunately, father put himself in a position through his own actions where he was unable to be a father to his children.” The juvenile court agreed father had “heart-felt feelings towards his own children. But that, in and of itself, is not a basis to deny these children the right to permanency through adoption.” The juvenile court noted the children were “thriving” in a home that had met all their needs, they were two and a half and one and a half years old when father became incarcerated and thus had lived most of their lives with their current caregivers. The juvenile court indicated it was compelled under the law and the evidence “to allow the children to be adopted by the current caretakers.” The juvenile court then terminated mother and father’s parental rights.

## CONTENTIONS

Father contends the juvenile court abused its discretion in summarily denying his section 388 petition and in refusing father's request for a continuance of the section 366.26 hearing to permit father to present evidence of the parent-child bond.

## DISCUSSION

1. *The juvenile court committed no error in denying father's section 388 petition.*

Section 388 permits an order of the juvenile court to be changed, modified or set aside if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist, and (2) the proposed change would promote the best interests of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

A section 388 petition must be liberally construed in favor of its prima facie sufficiency. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) The juvenile court may summarily deny a section 388 petition if the petition fails to make the required prima facie showing. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460-461.) We review a summary denial of a section 388 petition for abuse of discretion. (*In re Aaron R.* (2005) 130 Cal.App.4th 697, 705; *In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

Father contends the juvenile court abused its discretion in ignoring the voluntary efforts father made while incarcerated and by not considering that his anticipated date of release from prison, May of 2012, will occur 27 months after the children were removed from mother's custody, which exceeds by only a few months the 24-month maximum term of family reunification services.<sup>5</sup>

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<sup>5</sup> The Department notes father's anticipated release date is 29 months after the children originally were detained, and not 27 months as father claims.

Father asserts he was deprived of an opportunity to reunify with his children based solely on his incarceration. Father argues that even six months of reunification could have significantly improved father's chance of preserving his parental rights. Father concludes the children should not be fast-tracked to adoption by non-relatives without an evidentiary hearing to address the question of detriment to the children.

Father's claims are not persuasive. At the time of the disposition hearing, the juvenile court denied father family reunification services because father's incarceration would extend beyond the maximum term of such services and it was not in the best interests of the children to provide father services. In father's first appeal, the order denying father family reunification services was affirmed. Father's section 388 petition effectively requested reconsideration of the prior order denying reunification services. Although father's petition alleged he attended some programs and stayed in contact with the children, the length of his term of incarceration remained unchanged. Thus, the petition did not allege changed circumstances.

Further, there was no showing that delaying permanence for the children in order to provide father family reunification services would be in the best interests of the children. When a section 388 petition is filed after reunification services have been terminated, the juvenile court must be mindful that "the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation] . . . ." (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) "While the bond to the caretaker cannot be dispositive . . . , our Supreme Court made it very clear in [*In re Jasmon O.* (1994) 8 Cal.4th 398, 408, 414-422] that the disruption of an existing psychological bond between dependent children and their *caretakers* is an extremely important factor bearing on any section 388 motion." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531.)

Here, the children were placed with Mr. and Mrs. M. on February 1, 2010, approximately two months after they were removed from mother's care. Mental health assessments of the children conducted a few months later indicated O.C.

“may not have a sense of who her parents are, given that she does not appear to recognize their voices on the phone.” J.C. spoke in one or two words and had been diagnosed with a communication disorder. In August of 2010, the caretakers reported the children would not remain on the telephone with father. Even in the final reports submitted to the juvenile court, Mr. M. reported the children were easily distracted during father’s telephone calls.

Also, the social reports uniformly indicated the children appeared to be bonded and attached to Mr. and Mrs. M. Further, Mr. and Mrs. M. had an approved home study and they were committed to “providing the children a loving and permanent home if parental rights are terminated.” In light of this evidence, the juvenile court reasonably could conclude that providing father family reunification services would unnecessarily delay permanence for the children and was not in their best interests.

Father’s speculates that, had services been ordered he might have made a stronger showing of the beneficial parental relationship exception. However, such speculation is an insufficient basis upon which to reverse the juvenile court’s ruling. In sum, no abuse of discretion appears in the summary denial of father’s section 388 petition.

2. *The denial of father’s request for a continuance of the contested permanency planning hearing was not an abuse of discretion or a denial of due process.*

a. *Relevant principles.*

With respect to continuances, section 352 provides a continuance in a dependency case shall be granted only on a showing of good cause and shall not be granted if it is contrary to the best interests of the child. (§ 352, subd. (a).)

“In considering the minor’s interests, the court shall give substantial weight to a minor’s need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.” (§ 352, subd. (a).) Section 352 has been construed as discouraging continuances in dependency cases. (*In re Elijah V.* (2005) 127 Cal.App.4th 576, 585;

*In re Karla C.* (2003) 113 Cal.App.4th 166, 179; *Jeff M. v. Superior Court* (1997) 56 Cal.App.4th 1238, 1242.) We review the denial of a continuance for abuse of discretion. (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 604-605; *In re Elijah V.*, *supra*, at p. 585; *In re Ninfa S.* (1998) 62 Cal.App.4th 808, 810-811.)

Regarding the juvenile court's obligations at a permanency plan hearing, there is a strong preference for adoption over other permanent plans. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) If a child is found to be adoptable, the juvenile court must terminate parental rights at a section 366.26 hearing absent a relevant exception. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.)

The beneficial parental relationship exception, at issue here, arises when: "The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) In applying the exception, the juvenile court "balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

The parent has the burden of showing both regular visitation and contact and benefit to the child in maintaining the parent-child relationship. (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 466.)

b. *Father's arguments.*

Father contends the juvenile court's refusal to allow the children to testify about the nature of the parent-child relationship constituted a denial of due process requiring reversal of the order terminating his parental rights. (*In re Amy M.* (1991) 232 Cal.App. 3d 849, 867.) Father asserts the testimony of at least the older child, who is now five years of age, would have been the best evidence of whether termination of parental rights would be detrimental to the children. Father claims the social reports

did not address the nature of the children's relationship with father, describe the content of their telephone conversations, or address the impact on the children of severing their relationship to father. Father notes a four year old can testify in a juvenile dependency proceeding. (*In re Katrina L.* (1988) 200 Cal App.3d 1288, 1299; Evid. Code, § 700 ["every person, irrespective of age, is qualified to be witnesses"].) Father concludes that, under these circumstances, the juvenile court should have continued the hearing to permit the children to testify.

c. *Father failed to show good cause for the continuance and, in any event, no different result would have obtained had the children been present.*

On April 5, 2011, the juvenile court set the permanency planning hearing for a contest on August 2, 2011, and issued an order directing father to be transported to court for the hearing. Father's counsel did not ask the juvenile court at that time to order the presence of the children. Additionally, father could have compelled the attendance of the children through service of process but did not.

(*In re Jennifer J.* (1992) 8 Cal.App.4th 1080, 1085 [under section 341, parents have the right to cause issuance of process to compel attendance of witnesses].)<sup>6</sup>

Thus, father failed to make use of the available means by which he could have caused the children to be present for the contested hearing. Additionally, when father's counsel requested the continuance, counsel did not state the anticipated testimony of the children and did not explain why a continuance was necessary to obtain the presence of the children. Thus, father failed to show good cause for the

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<sup>6</sup> Section 341 provides: "Upon request of the social worker, district attorney, the child, or the child's parent, guardian, or custodian, or on the court's own motion, the court or the clerk of the court, or an attorney, pursuant to Section 1985 of the Code of Civil Procedure, shall issue subpoenas requiring attendance and testimony of witnesses and production of papers at any hearing regarding a child who is alleged or determined by the court to be a person described by Section 300."

continuance. Given these circumstances, it was not an abuse of discretion to deny the request. (*In re Ninfia S.*, *supra*, 62 Cal.App.4th at pp. 810-811.)

*In re Amy M.*, *supra*, 232 Cal. App. 3d 849, cited by father as controlling, is distinguishable. In *Amy M.*, the juvenile court held a dispositional hearing concerning a girl who had been molested by her father. The parents sought to call their eight-year-old son as a witness. The juvenile court precluded the child from testifying because a medical examiner testified the child was under significant psychological stress and would suffer additional emotional harm if he testified. (*Id.* at p. 864.) *Amy M.* held the denial of the request to call the child as a witness violated the parents' due process rights where there was no other evidence that could substitute for the child's testimony and the parents had not been granted access to the child before the hearing. (*In re Amy M.*, *supra*, 232 Cal. App. 3d at pp. 867-868.)

Here, unlike the situation in *Amy M.*, the juvenile court did not preclude the testimony of the children. Rather, it refused to grant father a continuance to present their testimony. Thus, *Amy M.* is not controlling.

Moreover, even if error in the denial of a continuance is presumed, father cannot show prejudice. In order to establish the beneficial parental relationship exception to the termination of parental rights, father had to show he maintained "regular visitation and contact" with the children. (§ 366.26, subd. (c)(1)(B)(i).) Father's letters and telephone calls were insufficient for this purpose.

Further, there is no indication in the record or on appeal that the children's testimony would have established a significant relationship with father such that termination of parental rights would greatly harm the children. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575-576.) Father did not occupy a parental role in the lives of the children after his arrest on May 10, 2009. The evidence offered by father in support of his section 388 petition established, at most, that the children knew father as their father, and they would receive some benefit from continuing the relationship. However, any incidental benefit the children might have enjoyed as a result of continued interaction with father was outweighed by the benefits the children would

receive from permanence through adoption. (*In re Autumn H.*, *supra*, at p. 575 [“Interaction between a natural parent and child will always confer some incidental benefit to the child.”].)

Here, as noted above, the children have been in the care of Mr. and Mrs. M. since February of 2010. The social reports indicated Mr. and Mrs. M. have met all of the children’s needs, the children regard Mr. and Mrs. M. as parental figures, and Mr. and Mrs. M. wanted to provide the children a permanent home. Thus, it is clear that testimony from these young children regarding father’s telephone calls to them would not have demonstrated application of the beneficial parental relationship exception.

With respect to father’s claim the juvenile court’s ruling operated to deny father due process, we note that “[d]ifferent levels of due process protection apply at different stages of dependency proceedings.” (*In re Thomas R.* (2006) 145 Cal.App.4th 726, 733.) Thus, at a permanency planning hearing, due process “ ‘requires, in particular circumstances, a “meaningful opportunity to cross-examine and controvert the contents of the report” ’ *if it is relevant to the issues before the court.* [Citations.]” (*Ibid.*) “ ‘The standard of review where a parent is deprived of a due process right is whether the error was harmless beyond a reasonable doubt. [Citation.]’ ” (*M.T. v. Superior Court* (2009) 178 Cal.App.4th 1170, 1182.)

Father testified at length about his relationship with the children and was free to cross-examine the social workers who prepared the reports. Beyond a reasonable doubt, the testimony of the children would not have altered the result of the hearing. Thus, we find no denial of due process.

Finally, after reviewing the record in this case, we invited the parties to address by supplemental letter briefs what impact, if any, the failure of the social reports to address the wishes of the children with respect to adoption may have had with respect to the juvenile court’s denial of father’s request for a continuance to present the testimony of the children. (See § 366.26, subd. (h)(1) [at a permanency planning hearing, the juvenile court “shall consider the wishes of the child and shall act in the



best interests of the child”].) Having received and considered the responses from the parties, we conclude the evidence recounted above and in connection with the discussion regarding the denial of father’s section 388 petition was sufficient to permit the juvenile court reasonably to infer the children wished to remain in the stable and appropriate placement with Mr. and Mrs. M.

In this regard, we note a child’s wishes concerning termination of parental rights need not be established through the child’s testimony at the section 366.26 hearing. (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1334; *In re Amanda D.* (1997) 55 Cal.App.4th 813, 820; *In re Leo M.* (1993) 19 Cal.App.4th 1583, 1591.) It is sufficient that the record contain evidence “from which [the child’s] feelings can be inferred.” (*Id.* at p. 1593.) Here, the social reports permitted the reasonable inferences the children desired to remain as placed with Mr. and Mrs. M.

Additionally, counsel for the children, who is directed by statute to interview clients who are four years of age or older “to determine the child’s wishes and . . . [to] advise the court of the child’s wishes,” requested termination of parental rights. (§ 317, subd. (e)(2).) As O.C. was four years of age at the time of the permanency planning hearing, in the absence of any evidence to the contrary, we presume counsel appointed to represent the child “complied with the code’s mandate and consulted, to the extent feasible, with [the child] before urging the juvenile court to terminate parenthood. Accordingly, the juvenile court properly could conclude the [child] . . . did not have a contrary wish. [Citation.]” (*In re Jesse B.* (1992) 8 Cal.App.4th 845, 853.)

Based on the foregoing, we conclude the juvenile court committed no abuse of discretion in denying father’s request for a continuance and the denial of that request did not deprive father of his right to due process.

**DISPOSITION**

The orders of the juvenile court are affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.